

Message

From: McGill, Thomas [McGill.Thomas@epa.gov]
Sent: 7/31/2018 7:36:06 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: FW: state rulemaking and EPA review timeframes

From: McGill, Thomas
Sent: Tuesday, July 31, 2018 1:52 PM
To: Calli, Rosemary <Calli.Rosemary@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>
Subject: state rulemaking and EPA review timeframes

Please let me know if you have any comments/suggestions.

State Rulemaking Process

- The public comment period for FDEP's draft 404 assumption rules ends on July 31.
- FDEP's Notice of Proposed Rule (NOPR) is targeted to be noticed for public review/comment on Aug 21.
 - o **NOPR process could end as early as Sep 18, but could potentially be delayed by several months.**
 - o FDEP intends to submit their proposed rule to the Office of Fiscal Accountability and Regulatory Reform (OFARR) by Aug 14
 - o NOPR is published for a 21-day period, 7 days after receipt by OFARR.
 - o FDEP could receive a request for a public hearing, which would likely be scheduled within a week following the end of the 21-day period.
 - o Outcome of NOPR could be "No Change" or a "Notice of Change", which would trigger restarting the NOPR process.
 - o Depending on comments received, the Notice of Change could potentially occur multiple times during the rulemaking process.
 - o Florida administrative procedures allow the public to challenge the rule during the NOPR process.
 - If the NOPR is challenged, an Administrative Law Judge with the Department of Administrative Hearings (DOAH) would need to set a hearing, and ultimately issue an order.
- If the NOPR is not challenged and the outcome of the process is "No Change", FDEP would file the final rule with the Secretary of State.
 - o The FDEP's rule becomes effective 30 days after the rule is filed with the Secretary of State's office.
 - o The public could challenge the rule before or after it is filed, which would lead to an ALJ scheduling a hearing and ultimately issuing an order.
- If the rule is challenged at any time and the DOAH were to issue an order upholding the rule, the public could appeal the decision to the State Court of Appeals.
- In summary, **the State's rulemaking process could be completed as early as late-September and as late as sometime in 2019.**

Submission of a Complete Package

- The State's submission of a complete package may take as much as a month following the completion of the State's rulemaking process.
 - o Can we state why?

EPA's review of a Complete Assumption Package

- Regulations provide that EPA has 120 days to review an assumption package, unless the State/EPA agree on a longer timeframe.
- **Regulations require that EPA provide the Corps of Engineers, the U.S. Fish and Wildlife Service and the NOAA Fisheries Services 90 days to review** and provide comment on the State's assumption package.
 - o The amount of time needed for EPA's review will also need to account for time needed to fully consider any comments received prior to taking action on the State's assumption package.

- Other required timeframes during the EPA's review period (i.e., public comment period, public hearing if requested) could occur during the above 90-day review period.